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CANADIAN COPYRIGHT.

The following editorials have appeared in the *Toronto Telegram*, and were from the pen of a gentleman thoroughly versed in the question of Copyright. In these articles he deals with several important points connected with Copyright in Canada.

THE BERNE CONVENTION.

In 1883 the authors of several of the leading Continental States, feeling that great inconvenience was caused by the differing copyright laws of different countries, and by the distinction which in many countries existed between the rights of foreigners and natives, met together at Berne to consider the matter. They recognized the fact that they could not hope to make a uniform copyright law for all countries ; but they thought it possible that the natives and domiciled residents of all the countries which might be brought to concur, might be put upon an equal footing ; so that, for instance, a French author might have in Germany all the rights of a German ; in Italy all the rights of an Italian ; in Sweden all the rights of a Swede, etc., etc. This proposition was formulated to the first Article of the Convention of 1883. It was repeated in the second Article of the Diplomatic Conference of 1884. The proceedings were in French. The following is a translation of the article :—

" Subjects or citizens of each one of the contracting States shall enjoy in all the other States of the union, so far as the copyright of authors in their literary and artistic work is concerned, the advantages which the respective laws of these nations now accord, or in future shall accord, to native citizens. In consequence they shall have the same protection as native citizens and the same legal recourse against infringement on their rights, when they comply with the formalities and conditions demanded by the laws of the country where the work originates."

The formalities and conditions evidently refer to the regist conditions, so that the principle formulated was simply this . when an author has registered his work under the law of cation of his own country he should have all the benefit of isting laws of other countries to the same extent (and to no extent) as a native of that country could have. Thus a F author, having entered his book in France with the formal prescribed by the laws of France, would be held to have regist it in all other contracting countries. His copyright would no invalid for defect of form, nor for defect of nationality, so that copyright purposes a citizen of each contracting country wo become a citizen of every other contracting country. He co appeal as a native without discrimination to the same laws. T could never be done in the United States. The copyright la of that nation are for citizens only. No alien can acquire co right. No work of an alien can be protected from reprint by a precaution which can be taken. Every literary work of an ali is fair prize, just as formerly an Algerine corsair made prize of non-Mohammedan merchantman found upon the high seas. is the present law of the most enlightened nation in the worl The Berne Convention adopted another principle. It set out break down the national barriers and to enact a common Nat ization Act for all contracting nations, so far as literary artistic property is concerned.

The Berne Convention did not set out to change the muni laws of each country, but the bill sent out from England fo parliament to pass (and which nearly slipped through) set o do just that thing. If any Canadian now writes a book and w a copyright in Canada he must print it in Canada. That was principle deliberately adopted *by Mr. Mackenzie's Governmen* 1875, when the present Act was passed, yet we saw that in 1 under a National Policy, an Act nearly slipped through in whi that principle was abandoned.

The principle of the existing Canadian Act is the very same a that of the Berne Convention. The Canadians had anticipated i It accords to the citizens of every nation, having an internation copyright treaty with England, the same privileges as Canadia upon the same conditions as Canadians. It does not demand th type-setting. The stereotype plates may be imported, bu it d demand the printing in Canada. What the Berne Convention been twisted into is the abandonment of printing books in Cana

A NARROW ESCAPE.

The reading public of Canada have very little idea of the narrow escape they had during the session of parliament, from a complete break up of the present system of supply of books and periodicals. The bill which was to revolutionize the reading habits of the Canadians was suddenly sprung upon the house and was to have been pressed through without delay. To do the Ministry justice it should be said that from the wording and from the unexpected and sudden way it fell from the clouds, it was evidently prepared in England, and sent out in the interests of the English publishers. Its wide reach was not perceived until the newspaper abstracts attracted the attention of a few who could read between the lines, when it was seen to be in reality an act for compelling Canadians to buy all their books in England, and to render contraband all other editions but those published there. Now, if the British publishers would rise to the level of their privileges and publish with a view to the whole Empire, such a bill might have some justification, but they had not done so and never will do so. They publish with a view to the narrow English circulating library system—to the Mudies and Smiths of the great English cities—a system adapted only to dense centres of population, which utterly ignores the fact that in countries like Canada such methods are inapplicable. The bill which was held over at the last moment was aimed to introduce this system into Canada. It would have shut off the supply of new books from the farmer and artisan, and, making our parliament a catspaw for the London publishers, would have made reading a luxury for a few rich people in large cities. The people of Canada will not be content to wait forty-two years for their cheap edition—until, in short, the copyright has expired. They want to read books while they are new, and while the newspapers are discussing them.

Opening at random the London *Bookseller*, for October 9th, we find among the new novels, *to appear early in October*, "In Far Lochaber," by William Black, *in three volumes, crown octavo*, 31s. 6d, equal by mere difference in money to $7.50, without counting duty and freight. This book may be had at the present instant at our bookstores for $1.25, in a handsome library volume, and at 40 cents in paper. Had the English publishers, if become law all editions but that at $7.50 would be contraband, and liable to seizure at the frontier and in the bookstores. Some time next year there will no doubt be an English edition at 6s.; but

by that time we shall have forgotten all about the book. We cannot wait in Canada until all the circulating library folks in England are quite done reading a book before we commence to see the 6s. edition of it, and that price even is too high. If, however, we wish to wait forty-two years we shall be able to get a 2s. or 50c. edition from England.

Then, again, if such a bill should ever pass, we shall have to do without Blackwood's Magazine, or pay 75c. a month for it. The quarterlies will cost $1.50 each number. Littell's Living Age and the Eclectic and all periodicals which contain anything selected from English sources will be contraband. The sale of the New York papers, with Dr. McKenzie's account of the Emperor Frederick's illness would be illegal. The consequences of such legislation would reach to the most remote settlement in the distant Northwest. It would compel the employment of a special staff to enforce it, and throw this country entirely, for its reading, upon the original productions of American authors.

THE PROPOSED COPYRIGHT BILL.

Those who drafted the proposed Copyright Act have not drawn it upon any narrow plan of class interest. Such an attempt would have been foolish. The points to be kept in view are these :—1st. Nothing ought to prevent the importation of the original English edition. Therefore, all who have the means to buy the best editions and all public libraries, which must have the original edition, should be able to do so. 2nd. The public ought to have cheap editions of new books, suited to the needs of the country. 3rd. The authors ought to receive an assured royalty upon every copy of their books sold. 4th. If the author will not publish his book in Canada Canadians ought to be allowed to do so upon securing to the author his royalty. 5th. Canadian copyright ought to be conditioned as in the case of patents, upon Canadian manufacture.

All these considerations have been embodied in the proposed bill. It is a bill framed in the interests of buyer, seller, manufacturer and author, and as such is in the lines of a National Policy in the truest sense of that phrase. Take again, as an illustration, Mr. Black's new book "In Far Lochaber." He has sold to his United States publishers the Canadian market, and he holds over

any Canadian who prints his books the terrors of the Imperial statute of 1842. This is not a question of price, for the United States publishers are demanding as a right the Canadian market, and refuse to buy from the English author unless our market is thrown in. This the Canadian printer sees to be unjust, and he resents the antiquated law by which it can be done. The author practically says : It may be that you cannot buy my $7.50 (31s 6d) edition, but you must then buy from Harper's ; for I have sold your market to them. This is a high-handed way of treating this country, and no law ought to be permitted to exist by which it may be done. Here is another case showing to what extremes these may lead. A bookseller who had a regular account with the publisher of Liddle & Scott's small Greek Lexicon ordered two dozen copies with some other books. All came but the Lexicon, and he was informed that the Canadian market for that book had been sold in Boston. Now the usual retail price in Canada had been $2.25, but the Boston price was $3, plus Canadian duty of 15 per cent. and charges. The Canadian bookseller was thus requested to pay the U.S. duty of 25 per cent., and the Canadian duty of 15 per cent. Of course he would not do that, but bought the book from a London jobber. The illustration is given merely to show how completely Canada is considered to be an appendage to the United States.

The new bill proposes to secure to the author a royalty of ten per cent. upon the retail price of every copy of his book which is exposed for sale. This is the almost universal percentage to native authors in the United States. The abortive Act of 1872 proposed 12½ per cent. upon the wholesale price, which was too uncertain a basis.

Under the proposed bill the author may secure for himself a monopoly if he will print his book in Canada, but he may not transfer this market to his U.S. assigns, and hold it against the Canadians themselves. If the author will not provide for this market, any printer may, after a fixed time, do so ; but that printer will not thereby secure a monopoly against other Canadian printers. Others may print the book, but always the author gets his royalty from all. To secure a monopoly will be possible only to the author himself, upon printing in Canada, and always under the proposed bill the market will be open to the author's own English editions.

Finally, the proposed bill is only intended to cover English authors or such countries as may have an International Copyright treaty with England. It is expressly aimed to prevent the

abuse of the Imperial statute of 1842 by which the United States, while refusing to grant copyright on any terms to other than its own citizens, can yet obtain copyright in England, and consequently in Canada, for the works of United States citizens. It is not that Canadians care specially to afflict the American author for the sins of the potiticians ; but that they abominate all sorts of jug-handled law, either in books or fish or lobster cans.

CANADIAN COPYRIGHT.

There is no assertion more frequently reiterated than the assertion that this Dominion makes its own laws ; yet it is not true as regards copyright. The Imperial Government has year by year relaxed its control over our legislation until everything is conceded but this one thing. We make our own tariff ; we raise our own troops ; we regulate our own Patent laws, but our Copyright law is dominated by an Imperial statute passed in 1842, which still binds us. Time and again our Government has represented to the Imperial authorities that we are competent to attend to our own copyright legislation. A statute passed in 1872 by the Canadian Parliament on the subject was reserved and never received the royal assent. The existing Act of 1875 was also reserved and after much discussion the Imperial Parliament passed an Act, Aug. 2 1875, entitled "An Act to give effect to an Act of the Parliament of Canada respecting Copyright," so that it is manifestly incorrect to say that Canada legislates for herself, and this may also be seen on reference to the case of Smiles vs. Belford, (vol. 23 Grant's Chancery Reports) where the Imperial Act of 1842 will be found to have been enforced in Toronto. This state of matters ought not to exist. If our parliament is competent to legislate in regard to anything it is competent to this subject also. There is no difference between a patent and a copyright in principle. Our law protects the inventor, if he will manufacture in Canada ; but if after two years he will not do that, he ceases to be protected. The Canadian statute of 1875 gives protection to every book printed in Canada by an author living anywhere in the British Empire or in any country which has an international copyright treaty with Great Britain, but the book must be printed in Canada. The Imperial Act steps in and says : "The book may be printed anywhere, but if it is first published in England, it shall

also be copyright in Canada." Against this the Government of Canada has always protested, In 1870, the Canadian Government forwarded to England a minute of the Privy Council for Canada, which laid down the principle that the people of Canada will never consent to the extension of copyright without local publication. This principle was near being abandoned by a bill which was brought in during last session. It would indeed have been inconsistent for a Government pledged to a National Policy to have gone back upon a principle like that laid down before the National Policy was adopted by the country.

The anomaly of the Copyright law will at once appear if it be applied in the case of a patent. If a patentee in England were to sell the Canadian market to a United States manufacturer, and, if in spite of our patent law, he could secure a monopoly of our market to his United States assigns, the patented article which might be the subject of such a deal would never be made in Canada, and an immediate outcry would arise. But in the case of books a similar thing is done every day. Black's new book, "In Far Lochaber," is protected by the Imperial Act of 1842, and may not be printed in Canada. Our Government has offered time and again to secure a royalty to the author, but its offers have been refused, and the Imperial Parliament still insists on regulating our literary affairs. We may import the United States edition or pay $7.50 for the English edition ; and now we are threatened with another turn of the screw under the Berne Convention, so that we shall be shut up to the English edition or do without. Mr. Black's novels are not of much importance, but there are many books we shall find it hard to do without. And yet we talk of the autonomy of Canada.

COPYRIGHT UNDER TWO GOVERNMENTS.

In a previous editorial it has been shown how firmly Sir John A. Macdonald's Government in 1870 insisted on the principle that there never should be local copyright without local printing. It has also been shown that Mr. Mackenzie embodied this principle in his statute of 1875, still in force. The Government of Sir John went further. It passed a statute which was disallowed, but which was in principle identical with the one prepared by the Copyright Association of Canada now. The substance of it was that when an English author did not himself print an edition of his book in Can-

ada, a Canadian might do so upon paying a royalty of twelve and one half per cent. upon the wholesale prince. The English publishers refused to consent to this, and the English Government, at their dictation, disallowed the act. The principle it contained is conveniently termed "the Royalty System." It was objected with great force that "wholesale price" was too shifting a *datum* upon which to base the royalty. Other objections were urged, which it is not worth while to discuss at this distance of time. The Canadian Government of the day was restive under the snub of the disallowance of their bill. Lord Carnarvon, in his despatch of June 15, 1874, said plainly that he had advised her Majesty not to assent to it, because the Imperial Act of 1842 was in force in its integrity throughout Canada, "in so far as it prohibits the printing in Canada," and he added that, even if the royal assent had been given, the bill would have been invalid, because by the Colonial Laws Validity Act(28 and 29 Vic., chap. 63) "Any part of a colonial law which is repugnant to an Imperial Act extending to the colony in which such law is passed is *pro tanto* absolutely void and inoperative." The Canadian Pacific scandal and the change of Government which resulted in Canada, so occupied public attention that this question was not argued, but Mr. Mackenzie did not however, give way. He did not concede one iota of the principle laid down by his predecessors. He passed an Act which stated it again and avoided clashing with the Imperial Act, while not recognizing its existence in any way, thus leaving the question uncomplicated for future action.

The Canadian proposition of a "royalty" met, however, with many advocates in England. Many of the members of Copyright Commission were in favor of it, and the pressure was so strong that the publishers drew up a projected bill conceding it. This bill never went before the House of Commons, and the Canadian political people were too busy with Pacific scandals to think of books. So there was nobody to press the matter. The proposed bill adopted the "royalty system" to the fullest extent ; but, in order to render the collection certain, it limited reprinting to such process as might be licensed for that purpose. The English publishers could not think of any other way by which the collection of the royalty could be insured. There were other objectionable features in the bill ; anyone, however, who knows Canada will see that no Government would consent to be kept in hot water by a system of licensing presses. The owner of every newspaper in the country would have a license or make things disagreeable for the local member. The point to observe is that the royalty principle

is conceded. Now, this principle is the key note of the bill proposed by the Canadian Copyright Association.

The royalty system then, we repeat, was propounded by Sir John A. Macdonald, in the Disallowance Act of 1872. It was propounded in the Draft Act of the English publishers in 1873. It was supported by many important names on the Copyright Commission of 1878, and it is now the basis of the present movement in Canada. The English bill which our Government was almost deluded into passing was intended to inaugurate in Canada a system which (to quote the words of Sir Drummond Wolff, one of the Copyright Commissioners,) "has and can have no analogy in any other trade—viz., that of circulating libraries—by which means the price of books, to the great detriment of the reader and purchaser, is artificially kept up at a rate far beyond the cost of production."

THE NATIONAL POLICY OF ENGLAND IN LITERATURE.

It is safe to say that everywhere the primary idea underlying copyright statutes is that the work shall be printed in the country where the statute is made. Municipal law is necessarily enacted for the citizens and residents in each respective State. In Canada we are bound by our own copyright law; but we are bound also by an Imperial statute passed in 1842. This cast-iron act contains the following extraordinary provisions:—

"This Act shall extend to the United Kingdom of Great Britain and Ireland and to every part of the British Dominions." "British Dominions shall be construed to mean and include all ports of the United Kingdom of Great Britain and Ireland, the Islands of Jersey and Guernsey, all parts of the East and West Indies, and all colonies, settlements and possessions of the Crown which *now are or hereafter may be acquired.*"

There is no other statute, excepting that of the Royal Supremacy, which has such a sweep. Every other statute has some regard for the varying circumstances of the manifold races under the sway of Great Britain. Every other takes tacitly into account the nearness or remoteness and the previous history of the territory legislated for; but this statute regards nothing but the interests of the manufacturer in the British Islands. It extends to every possession as soon as annexed to the Crown. The arms and diplomacy

of England carry with them, not the English religion, not the English law of murder or theft, not the English civil or criminal law, but only the supremacy of the Crown—and of the circulating library ?

Let not our readers suppose that the juxtaposition of the circulating library with the British Crown is paradoxical. The absurdity is in the law, and the British Draft Act, which nearly slipped through last session, would have brought it home to us. People who live in England do not buy new books; they borrow them, and book publication is dominated by Mudie's library, which has practically swallowed up all others but Smith's. They cannot afford to buy. In France Daudet's last novel is published at three and a half francs, or 70 cents, which of our money is the standard price for new books, but in England Mr. Black's last novel is published at 31s 6d or $7 50 of our money. A Frenchman at Tonkin can afford to buy Daudet, but a Canadian on the Mackenzie River can neither buy Black nor subscribe to Mudie. He must wait until Mr. Black dies, and then, seven years after, when the copyright runs out, he may have the book in a 2s. edition if he be alive to read it.

This far-sweeping Imperial Act of 1842 may be supposed to embody the National Policy of England as regards literature, and on reference to the 17th section, it will be seen that the protection it grants is to "any printed book *first* composed or written, or *printed and published* in any part of the said United Kingdom." How narrow is the purview when the manufacture is concerned ! —the printing and publishing must be *first* in the British Islands ; but the penalty extends to every person who "shall import or bring for sale or hire" or "who shall have in his possession" any reprint of any work so protected throughout "any part of the British possessions." It must be borne in mind that the Act was passed 45 years ago, before the age of fast ocean steamers and of telegraph cables, and first publication necessarily carried with it the manufacture. Judicial interpretation it is asserted, has pared down the statute to demand only just publication, but there is no authoritative decision bearing upon that precise point. In 1874, in *Clementi* v. *Walker*, the principle was laid down that the printing must be done in Great Britain. Lord St. Leonards, in Jeffrey v. Boosey, held the same view. Baron Pollock said "the object of the legislature is not to encourage the importation of foreign books and their first publication in the country." Lord Chancellor Cranworth said, "If a foreigner having composed, but not having published, a work abroad, were to come to the country

and, the week or day after his arrival, were to print and publish it here he would be within the protection of the statute." From all which it is plain that the national policy of England in literary matters as laid down in the Act of 1842 was to demand the manufacture of the book in Great Britain as a condition of copyright. This is precisely what Sir John A. Macdonald's Government enacted in 1875. Both parties are at one. Here at any rate is a question of public interest where party politics cannot be invoked. To the supremacy of the Crown all parties cheerfully bow ; but the supremacy of Mr. Mudie is unsuited to the conditions of this country, and if any such act as the Draft Act of last session is passed it will press upon the people in a thousand ways undreamed of by the Government, and will raise an outcry very little anticipated by members of parliament.

Published by CANADIAN COPYRIGHT ASSOCIATION.